

In the Matter of)
)
PORT AUTHORITY OF NEW YORK AND)
NEW JERSEY)
)
Request for Waiver of Sections 90.157 and)
101.65(b) of the Commission's Rules)
)

Released: September 10, 2002

2. *Background.* The Port Authority is a municipal instrumentality and political subdivision of the States of New York and New Jersey.⁵ In the Port District, an area of about 1500 square miles in both States, the Port Authority provides, among other things, police, fire, emergency medical services, maintenance, and snow removal at its transportation, terminal, and commercial facilities.⁶ To support its extensive operations, the Port Authority operates an extensive network of public safety mobile and microwave facilities in the New York-New Jersey metropolitan area.⁷ Before September 11, 2001, the

⁷ *Id.* at 3.

Port Authority was headquartered at the World Trade Center and used the World Trade Center as one of its primary antenna sites.⁸

3. The destruction of the World Trade Center has severely disrupted the Port Authority's operation of its network, including but not limited to the communications facilities actually located there. In fact,⁹ virtually all of the Port Authority's operations have been affected by the attacks. Thirty-seven Port Authority police officers, thirty-eight civilian Port Authority employees, and nine other individuals providing services to the Port Authority were killed in the attacks.¹⁰ Three of the Port Authority's antenna sites were destroyed.¹¹ The Port Authority has established interim headquarters and leased other office space for its employees throughout the New York City metropolitan area.¹² From September 11, 2001 until December 31, 2001, the Port Authority incurred \$1.4 billion in expenses related to the destruction of the World Trade Center and the PATH Terminal.¹³ The Port Authority reconfigured its train routes and schedules to compensate for the mass transit facilities rendered unusable as a result of the attacks. It also temporarily restricted traffic at its tunnels and bridges.¹⁴ The Port Authority's aviation facilities were also substantially affected by the attacks.¹⁵ The Port Authority states that the plan for restoring the World Trade Center includes the restoring the World Trade Center Stations to operational status.¹⁶

4. The Port Authority seeks a waiver of Sections 90.157 and 101.65(b) of the Commission's Rules. Section 90.157 of the Commission's Rules, which applies to the Port Authority's Private Land Mobile Radio Stations, provides:

A station license shall cancel automatically upon permanent discontinuance of operations. Unless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

Section 101.65(b) of the Commission's Rules, which applies to the Port Authority's Fixed Microwave Services licenses, states in pertinent part:

Pursuant to § 1.955 of this chapter, if a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

⁸ *Id.*

⁹ *Id.* and Exhibit A, which contains a list of the World Trade Center Stations affected by the September 11, 2001 terrorist attacks.

¹⁰ Exhibit B at I-4.

¹¹ Waiver Request at n. 4.

¹² Exhibit B. at I-4.

¹³ *Id.*

¹⁴ *Id.* at I-4 to I-5.

¹⁵ *Id.* at I-5.

¹⁶ Waiver Request at 3-4.

The purpose of these rules is to ensure efficient utilization of authorized channels and to prevent warehousing of spectrum while also considering the licensee's need for operational flexibility.¹⁷

5. In order to obtain a waiver of the Commission's Rules, a licensee must demonstrate that:

(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

In this case, we conclude that the terrorist attacks on the World Trade Center clearly constitute a unique and unusual circumstance under the second prong of the waiver standard. In this connection we note that we have previously granted a six-month waiver of Section 101.65(b) to a licensee with some communications that had facilities formerly located on the World Trade Center.¹⁹ In the matter currently before us, we believe that the Port Authority faces a major challenge and higher hurdle than the other licensee in reconstructing its World Trade Center Stations given that its headquarters were once located at the World Trade Center and the extent of its network. In this regard, we also note that the Port Authority, a public safety entity, uses the World Trade Center Stations to operate its extensive network of transportation, terminal, and commercial facilities throughout the New York City metropolitan area. We therefore conclude that it would be inequitable and contrary to the public interest to apply the rule and conclude that the licenses for the World Trade Center Stations would automatically cancel on September 11, 2002. Therefore, we grant the Port Authority's request to waive Sections 90.157 and 101.65(b) of the Commission's Rules with respect to the World Trade Center Stations.²⁰

6. The Port Authority requests a waiver "until such time as the process for reconstruction and resumption of the Port Authority's communication operations can be completed."²¹ The Port Authority, however, does not identify any timeframe within which it believes it can complete that process. While we understand the difficulties that the Port Authority faces in determining when it can reconstruct the World Trade Center Stations, we believe that a fixed waiver term is appropriate to avoid any ambiguity concerning the status of the licenses and to allow relicensing of any spectrum that the Port Authority may later decide is not necessary for its future operations. In the *Winstar Order*, we granted a six-month waiver.²² Only thirteen of 1,768 Fixed Microwave Services (FMS) stations owned by Winstar Communications and its subsidiaries were destroyed or rendered inoperable by the terrorist attacks.²³

¹⁷ See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148, *Report and Order*, 11 FCC Rcd 13449, 13465 (1996); Amendments of Parts 1 and 90 of the Commission's Rules concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7297, 7299 ¶ 14 (1991).

¹⁸ 47 C.F.R. § 1.925(b)(3).

¹⁹ See also Winstar Wireless Fiber Corporation and New Winstar Spectrum, LLC Request for Waiver of Sections 101.55(a), 101.63(a), 101.65(a) and (b), and 101.305(a) and (d) of the Commission's Rules, *Order*, 17 FCC Rcd 7118, 7122 ¶ 10 (WTB PSPWD 2002) (*Winstar Order*).

²⁰ *Id.*

²¹ Waiver Request at 5.

²² *Winstar Order*, 17 FCC Rcd at 7122 ¶ 10.

²³ *Id.* at 7119 ¶ 3.

Despite the tremendous strain on its personnel and financial resources, we note that the Port Authority has demonstrated that it has begun the process of re-establishing some of the World Trade Center Stations to operational status²⁴ and has temporarily or permanently relocated some of the World Trade Center Stations to other sites.²⁵ We further note that the Port Authority states that it intends to resume operations as promptly as possible and that “the need for these essential public safety facilities has been heightened because of the attacks.”²⁶ Although we granted Winstar a waiver of Section 101.65(b) for six months, we find that the Port Authority, a public safety entity once headquartered at the World Trade Center, was more severely affected by the attacks than Winstar. We believe the Port Authority should be given more time to reconstruct its World Trade Center Stations. Consequently, based on the information before us, we grant the Port Authority until September 11, 2003, or one year after September 11, 2002, to return the World Trade Center Stations to operational status without the risk of forfeiting the licenses for permanent discontinuation.²⁷

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), Sections 1.925, 90.157, and 101.65(b) of the Commission’s Rules, 47 C.F.R. §§ 1.925, 90.157, and 101.65(b), the Request for Waiver filed on August 9, 2002 by the Port Authority of New York and New Jersey IS GRANTED to the extent indicated.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D’wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁴ Waiver Request at Exhibit A.

²⁵ *Id.* at 3.

²⁶ *Id.* at 4.

²⁷ The grant of this Waiver Request does not relieve the Port Authority from submitting renewal license applications for any of the World Trade Center scheduled to expire during the one-year waiver period. We further note that our action herein does not preclude the Port Authority for requesting additional time should circumstances so warrant.